

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:08cv565-1-C

3:06cr115-C

ASHLEY TERRELL BROOKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

THIS MATTER is before this Court upon the government's Response (Doc. No.10) to Petitioner's Motion to Vacate (Doc. No. 1), in which the government requests that the Motion be summarily denied.

In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Court advises Petitioner, who is proceeding pro se, of the heavy burden that he carries in responding to the government's pleading.

Rule 56(e), Federal Rules of Civil Procedure, provides:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

This language means that if Petitioner has any evidence to offer to show that there is a genuine issue for trial, he must now present it to this Court in a form which would otherwise be

admissible at trial, that is, in the form of affidavits or unsworn declarations. An affidavit is a written statement sworn before a notary public. An unsworn statement, made and signed under the penalty of perjury, may also be submitted. Affidavits or sworn statements must be presented by Petitioner to this Court within thirty (30) days of the entry of this Order. As stated by Rule 56(e), Petitioner's failure to respond may result in granting summary dismissal of the Motion to Vacate with prejudice.

IT IS, THEREFORE, ORDERED that Petitioner has thirty (30) days from the entry of this Order to file his response, including any evidence.

Signed: June 29, 2009

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

